

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20555

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OFFICE OF SECRETARY

In the Matter of

Implementation of Section 9
of the Communications Act

Assessment and Collection of
Regulatory Fees for the 1994
Fiscal Year

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

MD Docket No. 94-19

COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these Comments in response to the Notice of Proposed Rulemaking adopted March 4, 1994 and released March 11, 1994. The Notice proposes rules to implement section 9 of the Communications Act which provides for the establishment of regulatory fees.

NTCA is a national association of approximately 500 small and rural local exchange carriers ("LECs") providing telecommunications services to subscribers and interexchange carriers ("IXCs") throughout rural America. Some NTCA members provide cable service also. A large number of NTCA's members are nonprofit telephone cooperatives for which exemption from federal income taxation is available under 26 U.S.C. § 501(c)(12) and from state income taxes under various state laws.

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DISCUSSION

Section 9(h) provides an exemption for "nonprofit entities". The Commission proposes to interpret this term to mean any nonprofit entity exempt under Section 501 of the Internal Revenue Code (The Code). Notice, para. 15.¹ It proposes further to require that applicants claiming nonprofit [exempt] status include a current Internal Revenue Service (IRS) Determination Letter documenting its nonprofit tax exempt status. The Commission states that it wishes to avoid unnecessary paperwork to the extent possible. NTCA applauds any Commission effort to avoid unnecessary paperwork but urges the Commission to adopt procedures to ensure that nonprofit tax exempt entities like its telephone cooperative members are not penalized because of Internal Revenue Service delays in granting Determination letters. The Commission can remedy this potential problem by accepting timely cooperative telephone company requests to the IRS for Determination letters as evidence of "nonprofit" status in cases where Determination letters are pending at the IRS.

¹ In making its conclusion to include all nonprofit organizations exempt under section 501 generally rather than only those specified in section 501(c)(3) of the Code, the Commission notes that the 1991 House passed limitation of the exemption to 501(c)(3) organizations was omitted in the 1993 enactment of Section 9. The House Report containing the 1991 language is incorporated by reference in the legislative history of the 1993 enactment. See H.R. CONF. REP. NO. 213, 103 Cong., 1st Sess. 499 (1993) incorporating by reference H.R. Rpt. 102-207. Another interpretation, perhaps more logical, of the absence of a 501(c)(3) limitation in the 1993 passed version of regulatory fees legislation is that Congress intended nonprofit entities to enjoy exemption from fees regardless of their tax exempt status.

NTCA also recommends that the Commission accept initial Determination letters given by the IRS as ongoing proof of the telephone cooperative's exemption from the obligation to pay regulatory fees. Once a telephone cooperative is determined to be exempt by the IRS, its status is allowed to change back and forth for any given year depending on whether or not it meets the 85 percent test under Section 501(c)(12) of the Code in that year.² Because a cooperative cannot make the 85% calculation until after the books are closed for a given year, it may believe in good faith that it is qualified for fee exemption and yet later find out that it was not tax exempt in that year. NTCA believes the public will benefit from such a procedure because cooperative administrative costs of reapplying for Determination letters and the cost of Commission administration do not justify the minimal funds which the Commission will collect from fees from these small cooperatives that may not be able to determine whether they are exempt are not in any given year long after the time for filing the regulatory fee has passed.


For the above reasons, NTCA urges the Commission to (1) accept as evidence of nonprofit status letters sent by cooperatives requesting Determination letters in cases where Determination letters are pending, and (2) enact rules that

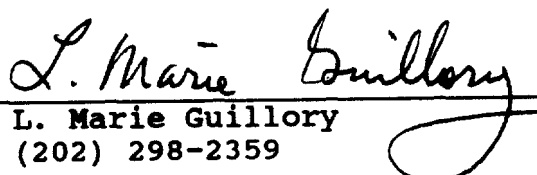
² Under Sections 501(a) and 501(c)(12)(A) of the Code cooperative telephone companies are exempt from federal income taxation if 85 percent or more of their income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

provide that cooperatives remain exempt from the fee requirements once they have been determined exempt under Commission rules, until a change in status has been determined.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE
ASSOCIATION

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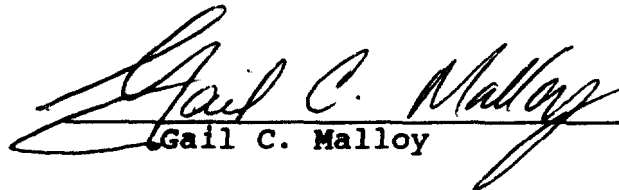
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April 7, 1994

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in MD 94-19 was served on this 7th day of April 1994, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:


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